



# STATE OF INDIANA

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July 19, 2013

Ms. Margaret Fosmoe  
*South Bend Tribune*  
225 W. Colfax Avenue  
South Bend, Indiana 46626

*Re: Informal Inquiry 13-INF-33(a); Ivy Tech Community College Board of Trustees*

Dear Ms. Fosmoe:

This amended informal opinion is in response to your inquiry concerning the Ivy Tech Community College Board of Trustees ("Board") and its compliance with the Open Door Law, Ind. Code § 5-14-1.5-1 *et seq.* Pursuant to I.C. § 5-14-4-10(5), I issue the following informal opinion. My opinion is based on applicable provisions of the ODL. Christopher A. Ruhl, Senior Vice President, responded on behalf of the Board. His response is enclosed for your reference.

## BACKGROUND

In your inquiry you provide that the Board met in executive session on June 5, 2013 from 1:30 p.m. to 3:30 p.m. in Fort Wayne, Indiana. In addition to members of the Board, Thomas Snyder, Ivy Tech President, and Tomas Coley, Ivy Tech North Central Regional Chancellor, were in attendance. One of the topics discussed during the executive session was a plan to eliminate 10 administrative positions in Ivy Tech's recently merged north central/northwest region in order to reduce expenses. The plan for layoffs was not discussed or voted on in a public meeting and the college planned to proceed with the layoffs by mid-July 2013.

You inquire whether the elimination of administrative positions falls under subject matter that would be permissibly discussed in an executive session and whether the Board provided proper notice under the ODL for the June 5, 2013 executive session. You further inquire whether the Board must vote on and approve such layoffs in a public meeting in order to proceed with such a plan. Ivy Tech Vice President Jeff Fanter has previously informed you that:

"Chancellors are empowered to make leadership and budget decisions within their regions. Significant decisions relative to the elimination of

positions are done in conjunction with the Office of the President. The Board and Regional Board of Trustees do not have statutory duties relative to the elimination of administrative positions. Authority is granted via by-laws and board resolution to the President and Chancellor. The President and Chancellor fully brief the Board on all such decisions.”

In response to your inquiry, Mr. Ruhl advised that the Board gave proper notice for its executive session held on June 5, 2013 in Fort Wayne, Indiana. The notice provided the time, date, and place of the executive session, and included a citation to the specific statutory citation that would allow the Board to meet in executive session and the language of any such citation. The notice was posted at the Ivy Tech’s principal office and at the entrance to the site of the meeting. The Board goes beyond the requirements of the ODL and widely distributes notices of its meetings to the media contact list that is attached to the Board’s response to your formal complaint. The Board is required to provide notice to all news media which deliver an annual written request for notice of the Board’s meeting prior to December 31 for the succeeding calendar year.

As to the discussion regarding the potential layoffs, the Board could properly meet in executive session pursuant to I.C. § 5-14-1.5-6.1(b)(9) to discuss such issues, as the statute allows for a discussion of the job performance evaluation of individual employees. As to your inquiry whether the Board must approve such layoffs, Mr. Ruhl advised that that guidance provided by Vice-President Mr. Fanter was accurate. The Board’s By-Laws grant the President and Chancellor broad authority over appointments of faculty and administrative staff. The elimination of an administrative position does not require the approval of the Board.

#### ANALYSIS

It is the intent of the ODL that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See* I.C. § 5-14-1.5-3(a).

Executive sessions, which are meetings of governing bodies that are closed to the public, may be held only for one or more of the instances listed in I.C. § 5-14-1.5-6.1(b). Notice of an executive session must be given 48 hours in advance of every session, excluding holidays and weekends, and must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. *See* I.C. § 5-14-1.5-6.1(d). This requires that the notice recite the language of the statute and the citation to the specific instance; hence, “To discuss a job performance evaluation of an individual employee, pursuant to I.C. § 5-14-1.5-6.1(b)(9)” would satisfy the requirements of an executive session notice. *See Opinions of the Public Access Counselor 05-FC-233, 07-FC-64; 08-FC-196; and 11-FC-39.* While the governing body

is required to provide notice to news media who have requested as such, nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2).

Here, the notice provided by the Board included the time, date, and place of the Board's June 5, 2013 executive session. Further, the notice specifically cited to the specific exceptions listed in I.C. § 5-14-1.5-6.1(b) that would allow it to meet in executive session and provided the language of each exception that was cited. Mr. Ruhl has advised the notice was posted at the College's principal offices and at the entrance to the site of the meeting. Further, all members of the media who had requested notice prior to December 31, 2012 were provided as such, pursuant to the requirements of I.C. § 5-14-1.5-5(b). It is my opinion that the notice provided by the Board for its June 5, 2013 executive session complied with the requirements of section 5 and 6.1 of the ODL.

You next inquire whether a discussion of the elimination of administrative positions would be an allowable topic of discussion by the Board at an executive session. Mr. Ruhl advised that said discussions were held pursuant to I.C. § 5-14-1.5-6.1(b)(9), which authorizes a governing body to discuss the job performance evaluation of individual employees in executive session. It is my opinion that the Board could hold an executive session pursuant to I.C. § 5-14-1.5-6.1(b)(9) to discuss the elimination of certain administrative positions pursuant to job performance.<sup>1</sup> The only caveat being that the subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process. There has been no showing that the Board's June 5, 2013 discussions held in executive session pursuant to (b)(9) occurred during a budgetary process. Thus, as the Board provided proper notice, it is my opinion that it complied with the requirements of the ODL as to the discussion of the elimination of certain administrative positions based on job performance held in executive session pursuant to (b)(9).

You next inquire whether the Board must vote on or approve such layoffs in a public meeting in order to proceed with its planned reduction of administrative staff. "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. *See* I.C. § 5-14-1.5-2(g). Final action must be taken at a meeting open to the public. *See* I.C. § 5-14-1.5-6.1(c). The only official action that cannot take place in executive session is a final action, which must take place at a meeting open to the public. *Baker v. Town of Middlebury*, 753 N.E.2d 67, 71 (Ind. Ct. App. 2001). Further, the ODL does not instruct governing bodies as to what actions specifically require a meeting and/or vote. *See Opinions of the Public Access Counselor 08-FC-136 and 12-FC-144*. Here, Mr. Ruhl has advised that the Board's bylaws grant the President broad authority over appointments of faculty and administrative staff. The elimination of an administrative position does not require the approval of the Board and it would not have had to approve such matters prior to action being taken. As such, it is my

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<sup>1</sup> To clarify, it is my opinion that a governing body may not meet in executive session pursuant to I.C. § 5-14-1.5-6.1(b)(9) to discuss a reduction in staffing based solely on economic issues. As applicable here, the decision to reduce staffing had already been made by the President, who retains such authority pursuant to the applicable bylaws; the executive session was held to discuss which employees were being let go based on the employees' respective job performance.

opinion that the Board did not violate the ODL by failing to vote on the elimination of certain administrative positions at a public meeting prior to proceeding with such a plan, as the Board has properly delegated such authority, via its By-Laws.

Please let me know if I can be of any further assistance.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "H".

Joseph B. Hoage  
Public Access Counselor

cc: Chris A. Ruhl